

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

**Before the Honorable James O. Browning**

**CASE NO.** CIV 09-631 JB/CEG

**DATE:** October 6, 2010

**TITLE:** *West v. NM Tax. & Rev. Dept., et al.*

**COURTROOM CLERK:** K'Aun Wild

**COURT REPORTER:** N/A

**COURT IN SESSION:** FTR-Vermejo-11:46:12 a.m.

**COURT IN RECESS:** FTR-Vermejo-12:11:35 p.m. = :25

**TYPE OF PROCEEDING:** Status Conference/Motion Hearing (see below)

**COURT'S RULINGS/DISPOSITION:** Motion for Continuance [107] - **GRANTED**

**ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY:** Court

**ATTORNEYS PRESENT FOR PLAINTIFF(S):** **ATTORNEYS PRESENT FOR DEFENDANT(S):**

Paul Gayle-Smith (appearing  
telephonically)

Paula Maynes (appearing telephonically)

**PROCEEDINGS:**

**Court in Session: FTR-Vermejo-11:46:12 a.m.**

**Court:** Calls case. Counsel enter appearances.

**Court:** Not yet working on MSJ's in this matter - not sure will get decisions out before Friday's PTC. Discusses with counsel possibility of placing case on a firm trial setting.

**Mr. Gayle-Smith:** Amenable to same.

**Ms. Maynes:** That is Defendants' request.

**Court:** Understood that counsel want trial to be held in Las Cruces.

**Ms. Maynes:** Has learned from Plaintiff's counsel that she wants trial in Albuquerque.

**Mr. Gayle-Smith:** Plaintiff does want trial in Las Cruces sooner rather than later - most of Plaintiff's witnesses are in Las Cruces. Believes now could convince client that moving from 10/18 trailing docket may be better.

**Ms. Maynes:** Defense witnesses are in ABQ and Santa Fe and ABQ is a better venue for them, but have been willing to accommodate Plaintiff and her being unable to travel.

**Mr. Gayle-Smith:** Would benefit Plaintiff from health standpoint to have trial in Las Cruces.

**Court:** Understands will be a 3 day bench trial - suggests conduct on Nov. 8, 9 and 10.

**Ms. Maynes:** Currently set for trial in Las Cruces from Nov. 1 through 5 - will depend on that trial as to whether could be ready for trial on 11/8 - after that trial any time in November is fine.

**Mr. Gayle-Smith:** Believes 11/8 through 11/10 will work - does for him, but wants to consult with client.

**Court:** Suggests alternative firm trial dates of Nov. 22, 23 and 24 or Dec. 20, 21 and 22.

**Ms. Maynes:** Prefer 11/22 through 11/24. She is available in December, but concerned about Dec. dates working with her clients' schedules.

**Mr. Gayle-Smith:** Want to talk with client to determine which dates she prefers.

**Court:** Should call CRD after talk with client and let her know - Court will then decide when will try.

**Ms. Maynes:** Also wants to move PTC set on 10/8.

**Court:** Given going to vacate trial on 10/18, does Plaintiff have any problem with vacating PTC?

**Mr. Gayle-Smith:** No opposition.

**Court:** Will continue PTC and trial and will wait to hear from Mr. Gayle-Smith regarding preferred dates for firm trial setting. Also convened today, as understand Plaintiff's counsel wishes to submit additional briefing on MSJ?

**Mr. Gayle-Smith:** Yes - regarding exhaustion of administrative remedies - elaborates re: same - represents submission could be done in letter form in a couple of pages - perhaps would submit one or two cases in addition.

**Court:** Asks defense counsel that if allows her to submit sur-reply to Plaintiff's submission does she have any problem with Court allowing this?

**Ms. Maynes:** No - just want deadlines for submission and response.

**Mr. Gayle-Smith:** Can get in next Wed. (10/13) by midnight.

**Court:** Okay.

**Ms. Maynes:** Sur-reply can be in by 10/20.

**Court:** Okay.

**Mr. Gayle-Smith:** Instead wants to submit by 10/14.

**Ms. Maynes:** No problem.

**Court:** Plaintiff's submission will be due 10/14 and sur-reply by Defendants due on 10/20.

**Ms. Maynes:** Would like to check proposed dates for firm trial setting with her clients, as well.

**Court:** Okay. Will wait to hear from counsel as to which proposed dates for firm trial setting are preferred by their respective clients.

**Mr. Gayle-Smith:** Asks when decisions on MSJ's will be issued?

**Court:** More briefing may delay things - was going to turn to this case tomorrow – really cannot say - will have to give some thought - would likely have tried to have decisions out next week, but given desire to submit additional briefing that will likely be delayed.

**Court in recess: FTR-Vermejo-12:11:35**